Strong Capital Faces Precipice

Criminal Charges Could Be Filed Against Founder for Fund Moves; SEC Civil Counts Also Loom

By Tom Lauricella
And Christopher Oster

THE FATE OF Strong Capital is hanging in the balance.

The New York attorney general's office is giving serious consideration to filing criminal charges against Richard Strong, founder and chairman of **Strong Capital Management**, for allegedly personally profiting from improper trading in the mutual funds that his company runs, according to people familiar with the matter.

Separately, the Securities and Exchange Commission is weighing civil charges against Mr. Strong and his firm. The SEC could also seek a federal-court injunction against Mr. Strong if the agency concludes that Mr. Strong's latest actions violated a 1994 settlement reached with the SEC, according to people familiar with the matter.

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Alliance Capital said two of its top executives resigned over the fund scandal.
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The most severe charges could lead to Mr. Strong being barred from managing money for clients or from being affiliated with a firm in the mutual-fund business if the allegations are proved or if he agrees to a settlement under certain circumstances. But complicating matters is that Mr. Strong owns about 90% of Strong Capital Management, the firm he founded nearly two decades ago. Although Mr. Strong, 61 years old, hasn't managed mutual funds for several years, he has remained the firm's central decision maker and is actively involved in overseeing all the firm's money managers.

The potential end result is that Mr. Strong could be forced to sell his company, which manages $42 billion in assets, but has begun suffering investor withdrawals.

"This has huge implications" for the firm, says Paul Huey-Burns, a former assistant director of the SEC's Enforcement Division and now an attorney at Dechert LLP in Washington, D.C.

Stanley Arkin, Mr. Strong's attorney, says that discussions with authorities are continuing and that "we are facing all the potential prospects and doing so in a constructive and very sensible manner." He added, however, that he believed Mr. Strong's actions didn't amount to offenses that would warrant criminal charges.

A spokeswoman for Strong Capital Management declined to comment on the possible charges against the firm.

While it isn't unusual for regulators to file charges against the principal owners of Wall Street firms that could bar them from the securities industry, several former regulators and securities lawyers said they couldn't recall a similar instance that involved a company as large as Mr. Strong's. Strong Capital Management, based in Menomonee Falls, Wis., operates 66 mutual funds

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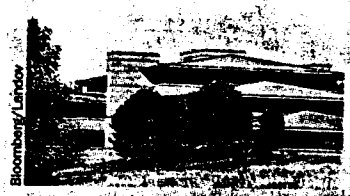
A Weak Spot in a Strong History

- **1974** Richard S. Strong, then 32 years old, launches investment management firm from a seventh-floor office in the Marine Bank building in Milwaukee.
- **1980** Firm moves to bigger quarters; assets under management hit $40 million.
- **1983** Strong assets under management hit $1 billion.
- **October 1987** About a week after the stock-market crash of '87, Strong opens flashy new "Prairie-style architecture" headquarters on 200 acres in Menomonee Falls, Wis. ▼
- **1994** Assets hit $10 billion.
- **July 1994** SEC censures Strong Capital Management for improper trading among its mutual funds.
- **Sept. 3, 2003** New York Attorney General Eliot Spitzer names Strong Capital Management as one of four firms that assisted a hedge fund in making rapid trades in Strong mutual funds. But no charges were brought against Strong at the time.
- **Late October** Spitzer investigators say Mr. Strong engaged in improper trading of his firm's mutual funds over the course of several years, which netted himself, friends and family members at least $600,000 in profits. Mr. Strong contends that his transactions weren't "disruptive" to the funds and that "only a small number were next day transactions," but that he will reimburse fund investors for any losses caused by his activities.
- **Nov. 2** Mr. Strong steps down as chairman of the Strong Funds board but remains a director.


Michael Abramson

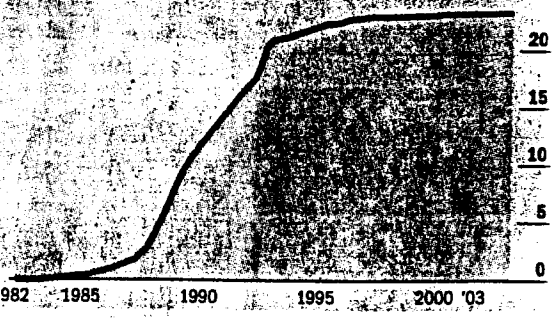
Dick Strong *at Milwaukee Circus Parade sponsored by Strong Funds in 1999.*


Bloomberg/Landov


Milwaukee Journal Sentinel

Below, Strong mutual-fund assets, not including money-market funds; in billions. Year-end assets until 1988, then quarterly. At left, Richard Strong

Source: Morningstar



Strong Capital Stares at Precipice

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and has 1,300 employees.

Even among the individuals and firms already facing charges stemming from the current investigations into mutual-fund trading abuses, the situation involving Mr. Strong appears unique.

"This is an extremely unusual situation," says Julie Allecta, an attorney at Paul Hastings Janofsky & Walker in San Francisco, "In a situation where a person's name is on the door, and they run the company and they are the majority owner, it is very difficult to separate the fortunes of the company" from the individual, she said.

Mr. Strong is alleged by investigators to have engaged in short-term trading of Strong Mutual Funds in violation of the funds' rules discouraging such trading. The trading spanned several years and the profits amounted to at least $600,000, they say. In statements released by the firm, Mr. Strong has admitted to conducting trades on behalf of himself, friends and family. However, he has claimed that the trading wasn't "disruptive" to those funds and has pledged to repay any investor losses caused by his trading.

Strong Capital Management was cited, but not charged by Mr. Spitzer in early September for allegedly allowing a hedge fund to market-time the firm's funds in exchange for putting money into a hedge fund run by Strong. The firm is also alleged to have provided details of portfolio holdings to the hedge fund that weren't available to most investors. Mr. Strong resigned as chairman of the board of Strong Funds in early November, but he still holds a seat on the board and has maintained his position as head of Strong Capital Management.

The current troubles for Strong come after an earlier run-in with regulators. In 1994, Strong Funds, without admitting or denying wrongdoing, made restitution of $444,300 to three of its funds and agreed to other penalties when it settled SEC charges that it improperly moved securities among accounts that it ran during a three-year period ended in 1990. In addition, the SEC said that from 1987 to 1989, Mr. Strong traded securities in his own account at the same time the firm was recommending those securities to clien ts.

As part of the deal, without admitting or denying wrongdoing, Mr. Strong agreed to a "cease and desist order" under which he pledged to not violate securities laws governing defrauding clients.

Federal securities laws bar individuals from acting as investment advisers to mutual funds if they have been convicted of felonies or misdemeanors related to securities violations or found civilly liable on charges related to securities violations. That also holds true for individuals who plead guilty as part of settlements overseen by the courts. Under the Investment Company Act of 1940, a company can be barred from the mutual-fund business if an affiliated person, especially one that controls a company, falls into the category of being barred from the business for securities violations.

If on the other hand, Mr. Strong was to be charged in an administrative proceeding by the SEC, which is used in a large percentage of SEC cases, he wouldn't necessarily be barred from the mutual-fund business.

The SEC also has the power to allow firms to remain in the mutual-fund business even if they violate securities laws by granting what is known as an exemption to the laws. In 1986 the SEC allowed E.F. Hutton & Co. to continue overseeing $10 billion in mutual funds despite a guilty plea the previous year to federal fraud charges.

Mr. Spitzer's office, meanwhile, has grappled with pressing charges against the chief executive of a major companies before. The New York attorney general wrestled over whether to charge **Citigroup** Inc. Chief Executive Sanford Weill for his company's involvement in misleading small investors with overly optimistic stock research. But while Mr. Weill's name is widely associated with Citigroup, he doesn't own the firm. Ultimately, Mr. Spitzer decided to not file charges against Mr. Weill.

If Mr. Strong is forced to sell his controlling stake in Strong Capital Management, investment bankers say the fallout from the fund-trading scandal could cut into the price he could get for the firm. The big risk for a buyer, the bankers say, is that in the wake of the scandal, investors continue to pull their money out of the Strong funds. Last month alone, investors withdrew a net $503 million from the company's stock bond- and money-market funds, according to a Strong spokeswoman.

Already, three states that employ Strong to manage part or all of their so-called 529 college-savings plans are considering shifting assets away. Wisconsin, Nevada and Oregon, which together have about $1.2 billion invested in such tax-advantaged plans with Strong, are evaluating those plans to in the wake of the scandal. Last week, Oregon Treasurer Randall Edwards recommended firing Strong as manager of a plan with $134 million in assets.

One way around such a problem is for a deal to include a clause saying the price would be based on the assets under management at some date in the future.

—Deborah Solomon contributed to this article.

IN JULY 1994, the Securities and Exchange Commission censured Strong Capital Management for improper trading among its mutual funds and took the unprecedented step of ordering the firm to increase the number of independent directors overseeing Strong Funds.

Strong complied, expanding the board from three members to six, five of whom now qualify as independent.

How independent? The Strong board's unaffiliated directors include a longtime friend of Strong Chief Executive Richard Strong, the former chancellor of Mr. Strong's alma mater and a former Green Bay Packer football player who was recommended to Mr. Strong by a friend. Another member [illegible] management.

Under current federal rules, there is nothing improper about the Strong board's independent directors having such ties with Mr. Strong or his investment-management company, whose activities the independent directors are required by law to oversee. But now that Mr. Strong and the Menomonee Falls, Wis., investment company he founded are central figures in the investigations into fund-trading abuses, the conduct of the Strong board is drawing increased scrutiny.

New York Attorney General Eliot Spitzer, who is expected to bring charges against Mr. Strong and his firm in coming days, said in congressional

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testimony last week that findings by [illegible] investigators indicating Mr. Strong had profited from rapid trades in his own funds were "Exhibit A" showing "dereliction of duty" by independent directors on the Strong Funds board. Mr. Spitzer said the Strong directors "could have and should have suspected" trading abuses in the funds they oversaw and he called for moves to ensure greater independence of fund boards.

Strong's board members either didn't return calls or referred calls to a spokeswoman at Bingham McCutchen LLP, the board's Boston-based legal counsel. A spokeswoman for the independent directors said in a statement that they "remain dedicated to the best interests of the funds' investors. Any suggestion that they are somehow beholden to Richard Strong to the detriment of the investors simply is not accurate." The statement said the directors declined to comment any further because "events are still unfolding."

A spokeswoman for Strong Capital Management said in a statement regarding the independent directors that the company "knew these individuals to be well-respected for their integrity, their experience and their accomplishments, and believed they would serve our clients well." Mr. Strong, who remains a member of the Strong Funds board after announcing in early November that he was stepping down as the fund board chairman, referred calls to the company spokeswoman.

To protect investors and perform important functions such as hiring a fund's investment manager, SEC rules require that the majority of mutual-fund boards consist of directors who are independent of the investment-management company paid to run the day-to-day activities of the fund. The Investment Company Act of 1940 has very specific guidelines for who qualifies as an "disinterested" person when it comes to fund boards. Immediate family members, employees and people who have a financial interest in a fund-management company all are considered to be interested. The definitions of an interested person are very specific, including clauses for such things as whether a person has loaned money to an investment manager in the preceding six months.

The rules are less clear about other relationships. It is common for former investment-company executives to qualify as independent directors for the funds they used to work for. Sometimes the relationships are even closer: When manager Ryan Jacob founded the Jacob Internet Fund four years ago, he named his uncle Leonard Jacob as an independent board member, with the SEC's approval.

"To the extent that board members [illegible] from the get-go biased in connection with the performance of their duties," says Mercer Bullard, a securities-law professor at the University of Mississippi and president of Fund Democracy Inc., a shareholder advocacy group.

Critics say another reason directors aren't really independent is that fund board members are often paid more than $100,000 a year for preparing and attending several meetings a year. At Strong Funds, the five independent directors earn between $124,000 and $152,000 for overseeing all of the company's 66 funds, and attending five meetings a year.

A decade ago, the Strong Fund's board had just three members: Mr. Strong, a retired Wisconsin foundry executive, and the chief executive of a Milwaukee-area engineering firm. The SEC ordered that Strong change its board to include at least five members, with at least three of those required to be independent.

The Strong board's first new member after the SEC settlement was Willie D. Davis, a former All-Pro Green Bay Packer defensive lineman who had forged a successful career as a beer distributor and radio-station owner. He joined the board in July 1994. While Mr. Davis had to be approved by shareholders, Mr. Strong introduced him to the current board.

Mr. Davis was recommended to Mr. Strong, according to people who worked at Strong in the early 1990s, by Ben Barkin, a Milwaukee public-relations executive who was close to both men. Two years ago, Messrs. Strong and Davis both were pallbearers at Mr. Barkin's funeral.

In 1995, the board added two more new directors, Stanley Kritzik and William F. Vogt. Mr. Kritzik knew Mr. Strong from the mid-1980s, when he had served on the pension board of Aurora Health Care, which hired Strong as a money manager. Two years ago, Richard Weiss, a fund manager at Strong, served on Aurora's board along with Mr. Kritzik. Mr. Vogt, meanwhile, is a long-time friend of Mr. Strong, according to people who used to work for the company.

In December 1999, Neal Malicky, then chancellor of Baldwin-Wallace College in Berea, Ohio, joined the Strong board. Mr. Strong earned an undergraduate degree from Baldwin-Wallace in 1963 and is a regular contributor to the school. In 2000, Mr. Malicky's first full year as a director, Mr. Strong gave between $2,500 and $4,999 to the small college. The next two years, Mr. Strong gave between $5,000 and $9,999 to the school.

Such ties, even if they don't raise red flags under current SEC guidelines, are likely to be more closely scrutinized because of the trading scandal.